IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 470 of 2002

ONKARESHWAR
V/S
PRAKASH CHANDRA

Mr. SG OJHA, for the appellant / petitioner

Mr. JAGDISH VYAS, for the respondent

Date of Order : 3.8.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

The matter comes up for final disposal in view of the order dt. 19.4.2004.

By the impugned judgment the learned lower Appellate Court has set aside the judgment of the learned trial court, and has framed two more issues placing burden thereof on the defendant appellant, and has remanded matter to the learned trial court to decide the matter afresh on the basis of the material available on record. The learned trial court has also been given opportunity to give its fresh decision even on other issues.

The grievance of the learned counsel for the appellant is that there was no justification for framing the two additional issues, and since the material is there

on record, and even the learned trial court has been directed to decide the suit afresh on the basis of material already available on record, there was no occasion or justification for remanding the matter.

Learned counsel for the respondent submits that two issues have been framed on the basis of the pleading of the defendant himself, and therefore, the issues need not be struck off.

In my view, since the burden of the two additionally framed issues have been placed on defendant, and no opportunity has been given to the defendant to produce evidence on these issues, and since the defendant does not want to press these issues, and request them to struck off, it would be appropriate that two additionally framed issue be struck off.

The appeal is accordingly allowed. The two additional frames issues are struck off, and the matter is sent back to the learned lower Appellate Court to decide the appeal itself on merits in accordance with law. The parties are directed to appear before the learned lower Appellate Court on 10.9.2007. The record of the learned court below be returned forthwith.

(N P GUPTA),J.

/sushil/